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IN THE

Supreme Court Of The United States

October Term, 1971

No. 71-639

WATSON CHAPEL SCHOOL DISTRICT
No. 24 ET AL ..... *Petitioners*
IN RE: JOHN NORMAN WARNOCK

v.

UNITED STATES OF AMERICA ..... *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE WATSON CHAPEL SCHOOL DISTRICT NO. 24, ET AL, IN REPLY

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Pursuant to Rule 24(4) (5) Petitioners file this Memorandum in Reply because the Respondents have in the brevity of its memorandum in opposition stated matters of prime importance incompletely or incorrectly. In order to put into focus what the petitioners believe to be points at issue it is necessary to clarify certain facts reported as evidence.

I

In paragraph two of the Memorandum for the United States in Opposition, it is stated:

> "after additional hearings, the district court on November 7 found that none of the four plans . . . "

The fact is there was only one hearing open to the public on the desegregation to racial balance plan submitted by HEW. Only one witness appeared in favor of the plan, a paid representative from HEW, while twenty four citizens testified that it would not work and more were ready to testify.

The preponderance of the evidence was to the effect that the HEW plan was not educationally sound or financially feasible. The testimony of the citizens has proved correct and the testimony of the HEW representative, not qualified as an expert, has been proved wrong. Some two hundred witnesses were available to testify at the contempt hearing of the school board on the 5th of February but were refused the right to testify.

II

In paragraph three, of the Memorandum of the U.S., it is stated:

> "The superintendent of the school district promptly filed a report with the court indicating that substantial steps had been taken to implement the court's order of November 17, 1970, and, on the basis of this report, the court entered an order on February 12, 1971, relieving the school board members and the superintendent of penalties."

The school board never signed a statement that they would comply with the court's order. However, when faced

with arbitrary sanctions to be paid to unknown complainants, who had never complained to the school board, its members stepped aside and let the Federal Court operate the school.

III

On page two of the Memorandum in Opposition, it is stated:

> "At the civil contempt hearing on February 5, 1971, the court further directed counsel for the school district, petitioner Warnock, to refrain from issuing public statements or in any other manner aiding in organizing resistance to the order of the court requiring implementation of a plan of desegregation."

The court stated on the 5th of February, 1971:

> "I am aware of the mass meetings that have been held and I take judicial knowledge of what was reported went on." (R 96, 97)

This is unheard of abuse of the Hearsay Rule and certainly does not come within the exception of *judicial knowledge*. At no time and at no mass meeting did counsel for the Watson Chapel School District encourage anyone to defy the court's order. If there were witnesses who informed the court thusly, counsel should have had the opportunity to confront them and the right to cross-examine.

The court went on with pronouncements from the bench to state at the hearing:

> "So, Mr. Warnock, as an officer of this court, you will make no further public statements or cooperate in arranging mass meetings, but you will

represent your clients in every possible way that your duty and responsibility calls for." (R 97)

This is the statement of the court. There was no order from the bench using the below language added by the Respondents:

"or in any other manner aiding in organizing resistance to the order of the court requiring implementation of a plan of desegregation."

Counsel did not hesitate to inform his clients that in his professional opinion, he considered the court's order unconstitutional and that it should be appealed all the way and every legal means taken to try to save public education at Watson Chapel. And it is repeated again, criticism is not defiance.

IV

From page three there is quoted:

"After a hearing on March 30, 1971, the court found that Warnock had 'knowingly, willfully and wantonly obstructed the implementation' of the court's order, adjudged him in civil contempt and ordered that unless he certified in writing to the court that he would refrain from taking action to obstruct the orderly implementation of the orders of the court, sanctions would be imposed. (Pet. App. 32-34)"

The instructions from the bench concerning making public statements by counsel were not included in the court's order when it was published, and the only writing to this effect was received several weeks later at the request of the school board to have a verbatim record typed.

The order was:

> "So, Mr. Warnock, as an officer of this court, you will make no further public statements or cooperate in arranging mass meetings but you will represent your clients in every possible way that your duty and responsibility calls for." (R 97)

At the encouragement of the press, representatives to the State legislature, and fellow members of the bar, counsel for the school board made a public statement on the 28th of March, 1971, in Heston Stadium, Pine Bluff, Arkansas.

This statement did not encourage anyone to defy the court's order, and not one witness testified at the hearing on March 30, that the school board's counsel had encouraged him or her to defy the court's order.

The only act committed by the counsel was that he had made a public statement to test the court's order *not* to make a public statement. Therefore, there is no evidence to support the findings of the court that petitioner Warnock "knowingly, willfully and wantonly obstructed the implementation of the court's order".

V

Memorandum of the United States in Opposition states:

> "On April 2, 1971, Mr. Warnock filed a certificate stating that he would comply with the court's orders (Pet. App. 32-34)."

The certificate signed by Colonel Warnock is quoted below:

CERTIFICATE

(Filed in U.S. District Court April 2, 1971)

Know All Men by These Presents:

That I, John Norman Warnock, after having been sworn do state:

That I will obey the orders of the United States District Court for the Eastern District of Arkansas dated the 5th day of February, 1971, at Pine Bluff, Arkansas, which reads as follows:

> "So, Mr. Warnock, as an officer of this court, you will make no further public statements or co-operate in arranging mass meetings, but you will represent your clients in every possible way that your duty and responsibility calls for."

And in accordance with a letter dated 31 March, 1971, from the same Court, I will refrain from such activities in the future so long as I am counsel for the Watson Chapel School District.

/s/ JOHN NORMAN WARNOCK

I, John Norman Warnock, swear that the above is true and correct to the best of my knowledge; however, it is to be understood that I have signed the document *under protest* and that by my signing I do not waive my right to appeal or cure any defects in the hearing proper.

/s/ JOHN NORMAN WARNOCK

State of Arkansas)
)ss.
County of Pulaski)

Subscribed and Sworn to before a Notary Public in and for the County of Pulaski, State of Arkansas, this 2nd day of April, 1971.

/s/ BONNIE ENGSTER
Notary Public

My Commission Expires: June 27, 1972

Please note that the certificate was signed under protest.

The only penalty that counsel was relieved of was the $500 fine. When he appeared at the district attorney's office on the day ordered, he tendered the $500 and demanded to know who was going to get his money. Since he was found guilty of Civil Contempt the government could not legally retain the money. After considering his demand he was told by the U.S. attorney that his $500 would not be accepted.

It is true that Counsel Warnock was relieved of all restrictions by order of the District Judge on the 24th of June, 1971. (Please refer to page 42 of the petition for a writ of Certiorari)

However this was only after counsel sought by petition to the Federal District Court in the District of Columbia to have the same restrictions placed upon the opposing counsel, the Attorney General of the United States the Hon. John N. Mitchell and his lovely wife, Martha Mitchell.

It is of little comfort to a man though, who has been

continuously hit on the head by a hammer, that when the beating has stopped and he is no longer suffering, he is advised that since he is not at present being hit on the head — he should be thankful, and that the question of injury is *moot*.

Counsel lost four months of liberty. It was lost because a federal judge denied him his rights under the First Amendment of the Constitution by preventing him from making a public statement. There was no condition to the order that the public statement must concern the school case.

Counsel believes that this is a live issue deserving consideration and a definite decision on its legality. To say that it is *moot* does not return the lost freedom. But to decide whether or not the court's action was proper is not necessarily advisory. To let the matter remain moot would serve only to encourage similar injustices.

VI

With regard to paragraph 2(a) of the Memorandum of the United States in opposition, the Watson Chapel School District denies that it had a constitutional *obligation* to bring about a transition to a so-called unitary system of education.

The school board denies that the Constitution makes such a demand, and that when the Court in its order closed the Negro school, it violated the provisions of the Civil Rights Act of 1964 previously cited. Also, when it ordered forced busing for the specific purpose of establishing a racial balance.

There was no dual system in operation in the sense of forcing either race to attend either school. Most of the

Blacks attended one school because it was in their area and was more convenient. If they had chosen to attend the other school they could have done so under "freedom of choice".

The court's order did not bring about a non-racial system. It enforced a racial system, in that its order required the assignment of children to specific schools according to race, and this is against basic freedoms protected under our Constitution.

VII

Now we come to the part where the government says that the HEW proposal was educationally sound and administratively feasible. (Page 4)

There is being prepared testimony of as many parents as can be gotten together to testify under oath (most of whom were not permitted to testify in any court hearing), whether or not they consider the HEW plan educationally sound. And more specifically they will state whether or not they believe that the level of education has improved or been lowered by the implementation of the government's plan.

From general talk and observation, there is no doubt but that over 90% will state that the court ordered HEW plan, as it has now been in operation for a year, is definitely educationally unsound and financially non-feasible.

State revenues will be cut drastically next year because approximately 600 students are still out and their share of the tax fund will not be available.

VIII

One of the most noticeable abuses of the truth by the

Justice Department in its memorandum is on the footnote (p 4) wherein it is stated:

> "The orders of the district court did not require the use of Title I funds or any other funds, but rather provided that the district superintendent should collaborate with the Arkansas State Department of Education to redraw the 'existing bus routes and develop procedures and policies to insure the transportation of all eligible pupils on a non-segregated and otherwise non-discriminatory basis'. (Pet. App. 26-27)"

The respondents chose to ignore page 40 of the same petition where the court in a letter to the Superintendent Mr. Spradlin, dated April 14, 1971 wrote:

> "One of the matters specifically referred to by the Court had to do with the obtaining of federal funds under Title I for the purchase of needed and necessary buses. The Court directed you to proceed with obtaining these funds *and for the school board to co-operate.*" (Emphasis added)
>
> /s/ OREN HARRIS

As a result of this order the school board co-operated in a "Pontius Pilate" reluctant manner, and ordered $11,000 of Title I funds to be transferred for the purpose of buying buses. They did not want to go to jail for faliure to obey the court's directive, although they felt it was illegal and the president of the board so stated in the open board meeting.

This $11,000 was placed in the general fund, and through some manipulation of the accounts was used or substituted funds were used to buy two buses which are

now in use at the school. This transfer and the purpose therefor is a matter of record in the school board minutes.

When Mr. Richardson, Secretary of the Health, Education and Welfare Department stated in August of 1971 that Title I Funds were not used to buy buses, he was asked for an explanation of the above transfer. The below quoted letter was received in reply:

DEPARTMENT OF HEALTH, EDUCATION
AND WELFARE

Office of Education

Washington, D. C. 20202

DEC. 17, 1971

Colonel John N. Warnock
Attorney at Law
Camden, Arkansas 71701

" - - - - -Records showed that two buses were ordered by the school district in April, 1971. However, these buses were charged to the regular school budget. There is no indication that Title I funds have been used by the Watson Chapel School for the purposes of general school transportation. We, therefore, consider that the investigation in this matter has been completed."

Sincerely yours

/s/ Richard L. Fairley
Richard L. Fairley
Director, Division of
Compensatory Education

The school board knows differently, the superintendent knows differently, and the people, especially those who at-

tended the board meeting that night know differently. Everybody seems to know differently except the Civil Rights Division of the Justice Department and HEW.

Another Federal District Court in Arkansas made a similar ruling on the 10th of September, 1971:

> ". . . . .The Court also held that the school board would be required to take immediate steps to arrange for transportation necessary under school desegregation plan, and to make application for such State and Federal funds as might be available for that purpose." *Davis v. Board of Education of North Little Rock, Arkansas*, 449 Fed 2d 500

WHEREFORE, Petitioners respectfully request that this Honorable Court return operation of Watson Chapel School to local control and permit attendance on a non-discriminatory, non-racial basis under the neighborhood school concept.

Respectfully submitted,

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